

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2352

Introduced by

Senators Grindberg, Robinson, Urlacher

Representatives Boucher, Rennerfeldt, Svedjan

1 A BILL for an Act to amend and reenact section 57-39.2-04.3 of the North Dakota Century
2 Code, relating to a sales and use tax exemption for purchases of computer and
3 telecommunications equipment by a new primary sector business; and to provide an effective
4 date.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 57-39.2-04.3 of the North Dakota Century Code
7 is amended and reenacted as follows:

8 **57-39.2-04.3. (Effective before February 1, 1999, and after July 31, 2002) Sales tax**
9 **exemption for manufacturing or recycling machinery and equipment and primary sector**
10 **business computer and telecommunications equipment.**

11 1. Gross receipts from sales of machinery or equipment used directly in
12 manufacturing of tangible personal property for wholesale, retail, or lease are
13 exempt from taxes under this chapter. To be exempt, the machinery or equipment
14 must be used in a new manufacturing plant or in a physical or economic expansion
15 of an existing manufacturing plant. Purchase of replacement machinery or
16 equipment is not exempt unless it results in a physical or economic expansion of
17 the plant.

18 2. Gross receipts from sales of machinery or equipment used directly in recycling of
19 tangible personal property are exempt from taxes under this chapter. To be
20 exempt, the machinery or equipment must be used in a new recycling facility or in
21 physical or economic expansion of an existing recycling facility. Purchase of
22 replacement machinery or equipment is not exempt unless it results in a physical
23 or economic expansion of the facility.

- 1 3. Gross receipts from sales of computer and telecommunications equipment that is
2 an integral part of a new primary sector business or a physical or economic
3 expansion of a primary sector business are exempt from taxes under this chapter.
4 Purchase of replacement equipment is not exempt under this subsection.
- 5 4. To qualify for exemption at the time of purchase, the manufacturer ~~or~~, recycler, or
6 primary sector business must receive from the commissioner a certificate stating
7 that the machinery or equipment qualifies for the exemption. If a certificate is not
8 received before the purchase, the manufacturer ~~or~~, recycler, or primary sector
9 business must pay the tax and apply to the commissioner for a refund.
- 10 ~~4.~~ 5. If the machinery or equipment is purchased or installed by a contractor subject to
11 tax under this chapter, the manufacturer ~~or~~, recycler, or primary sector business
12 must apply for a refund of the amount remitted by the contractor.
- 13 ~~5.~~ 6. For purposes of this section, the following definitions apply:
- 14 a. "Economic expansion" means an increase in production volume, employment,
15 or the types of products that can be manufactured or recycled.
- 16 b. "Equipment":
- 17 (1) For purposes of a manufacturer or recycler, means any tangible
18 personal property other than machinery used directly in the
19 manufacturing or recycling process; and
- 20 (2) For purposes of a primary sector business other than manufacturing or
21 recycling, means telecommunications equipment and computer
22 equipment, printers, and software that are an integral part of the
23 operations of the primary sector business.
- 24 c. "Machinery" means mechanical devices purchased or constructed by the
25 manufacturer or recycler, or its agent, and used directly in manufacturing or
26 recycling operations at any time from the initial stage where the raw material
27 is first received at the plant site through the completion of the product,
28 including packaging and all processes prior to transportation of the product
29 from the site. The term includes electrical, mechanical, and electronic
30 components that are part of machinery and necessary for a machine to
31 produce its effect or result and environmental control equipment required to

1 maintain certain levels of humidity or temperature in a special and limited
2 area of the manufacturing facility where the regulation is essential for
3 production to occur. The term includes computer equipment that controls or
4 monitors the functions of machinery used directly in the manufacturing
5 operations.

6 d. "Machinery" and "equipment":

7 (1) For purposes of a manufacturer or recycler, do not include handtools,
8 buildings, or transportation equipment not used directly in
9 manufacturing or recycling; machines and equipment used primarily in
10 administrative, accounting, sales, or other nonmanufacturing segments
11 of the business; any property that becomes a part of the manufactured
12 or recycled product; or any other equipment or machinery not used
13 directly in manufacturing or recycling; and

14 (2) For purposes of a primary sector business other than manufacturing or
15 recycling, do not include equipment that is not an integral part of the
16 operations of the primary sector business.

17 e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means
18 the processing of agricultural products, including registered and certified
19 seed, but does not include mining, refining, extracting oil and gas, or the
20 generation of electricity.

21 f. "Primarily" means more than fifty percent of the time the machinery or
22 equipment is used.

23 g. "Primary sector business" means an individual, corporation, limited liability
24 company, partnership, or association that through the employment of
25 knowledge or labor adds value to a product, process, or service which results
26 in the creation of new wealth and which has been certified by the department
27 of economic development and finance to be qualified under this subdivision.

28 h. "Recycling" means collecting or recovering material that would otherwise be
29 solid waste and performing all or part of the process in which the material
30 becomes a raw material for manufacturing or becomes a product for sale at
31 retail or wholesale.

- 1 physical or economic expansion of an existing recycling facility. Purchase of
2 replacement machinery or equipment is not exempt unless it results in a physical
3 or economic expansion of the facility.
- 4 3. Gross receipts from sales of computer and telecommunications equipment that is
5 an integral part of a new primary sector business or a physical or economic
6 expansion of a primary sector business are exempt from taxes under this chapter.
7 Purchase of replacement equipment is not exempt under this subsection.
- 8 4. To qualify for exemption at the time of purchase, the manufacturer ~~or~~, recycler, or
9 primary sector business must receive from the commissioner a certificate stating
10 that the machinery or equipment qualifies for the exemption. If a certificate is not
11 received before the purchase, the manufacturer ~~or~~, recycler, or primary sector
12 business must pay the tax and apply to the commissioner for a refund.
- 13 ~~4.~~ 5. If the machinery or equipment is purchased or installed by a contractor subject to
14 tax under this chapter, the manufacturer ~~or~~, recycler, or primary sector business
15 must apply for a refund of the amount remitted by the contractor.
- 16 ~~5.~~ 6. For purposes of this section, the following definitions apply:
- 17 a. "Economic expansion" means an increase in production volume, employment,
18 or the types of products that can be manufactured or recycled.
- 19 b. "Equipment":
- 20 (1) For purposes of a manufacturer or recycler, means any tangible
21 personal property other than machinery used directly in the
22 manufacturing or recycling process; and
- 23 (2) For purposes of a primary sector business other than manufacturing or
24 recycling, means telecommunications equipment and computer
25 equipment, printers, and software that are an integral part of the
26 operations of the primary sector business.
- 27 c. "Machinery" means mechanical devices purchased or constructed by the
28 manufacturer or recycler, or its agent, and used directly in manufacturing or
29 recycling operations at any time from the initial stage where the raw material
30 is first received at the plant site through the completion of the product,
31 including packaging and all processes prior to transportation of the product

1 from the site. The term includes electrical, mechanical, and electronic
2 components that are part of machinery and necessary for a machine to
3 produce its effect or result and environmental control equipment required to
4 maintain certain levels of humidity or temperature in a special and limited
5 area of the manufacturing facility where the regulation is essential for
6 production to occur. The term includes computer equipment that controls or
7 monitors the functions of machinery used directly in the manufacturing
8 operations.

9 d. "Machinery" and "equipment":

- 10 (1) For purposes of a manufacturer or recycler, do not include handtools,
11 buildings, or transportation equipment not used directly in
12 manufacturing or recycling; machines and equipment used primarily in
13 administrative, accounting, sales, or other nonmanufacturing segments
14 of the business; any property that becomes a part of the manufactured
15 or recycled product; or any other equipment or machinery not used
16 directly in manufacturing or recycling; and
17 (2) For purposes of a primary sector business other than manufacturing or
18 recycling, do not include equipment that is not an integral part of the
19 operations of the primary sector business.

20 e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means
21 the processing of agricultural products, including registered and certified
22 seed, and the refining of crude oil but does not include mining, other refining,
23 extracting oil and gas, or the generation of electricity.

24 f. "Primarily" means more than fifty percent of the time the machinery or
25 equipment is used.

26 g. "Primary sector business" means an individual, corporation, limited liability
27 company, partnership, or association that through the employment of
28 knowledge or labor adds value to a product, process, or service which results
29 in the creation of new wealth and which has been certified by the department
30 of economic development and finance to be qualified under this subdivision.

1 h. "Recycling" means collecting or recovering material that would otherwise be
2 solid waste and performing all or part of the process in which the material
3 becomes a raw material for manufacturing or becomes a product for sale at
4 retail or wholesale.

5 ~~h.~~ i. "Used directly" with respect to manufacturing means used primarily in the
6 actual production, processing, fabrication, or assembly of raw materials, or
7 partially finished materials, into the form in which the product is finalized,
8 packaged, and ready for market. The term also means:

9 (1) To effect a direct physical change upon the tangible personal property.

10 (2) To guide or measure a direct physical change upon the property when
11 the function is an integral and essential part of tuning, verifying, or
12 aligning the component parts of the tangible personal property.

13 (3) To test or measure the property on the production line or at a site in the
14 location of production.

15 (4) To transport, convey, or handle the tangible personal property during
16 the manufacturing.

17 (5) To package the product for sale and shipment.

18 (6) To conduct research and development and design activities related to
19 the manufacturing process of the plant.

20 "Used directly" with respect to recycling means used solely in processing,
21 compacting, altering, transporting, or otherwise affecting material as a part of
22 the recycling process.

23 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
24 June 30, 2001.